

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 725 OF 2005

Himanshu Chandrakant Mehta & Anr. .. Appellants

Vs.

Voltas Ltd. & Ors. .. Respondents

Mr. Ahmed Sayed with Ms. Priya Aggarwal and Mr. K.H. Halai for appellants.

Mr. D.D. Madan with Mr. Manek Kalyaniwalla i/by M/s. Mulla & Mulla Co. for Respondent No.1.

Mr. S.M. Moholkar for Respondent No.3.

CORAM: B.H. MARLAPALLE, J.

Date : August 02, 2005.

P.C.:

1. Heard the learned counsel for the appellants. The learned Judge of the City Civil Court at Mumbai has rejected a prayer for ad-interim relief in a Notice of Motion which is now registered as Notice of Motion No.2324 of 2005 by order dated 21-6-2005 and the same order is a subject matter of challenge in this appeal.

2. In the Notice of Motion in all four prayers have been set out and prayer clauses (b) to (d) seek

restraining orders in respect of Flat No.1302 located on the 13th floor of "Benhur" situated at 32, Narayan Dabholkar Road, Mumbai 400 006 together with the disputed portion (i.e. 100.5 sq.ft.) of the garage under stilt forming the subject matter of the pending suit i.e. Suit No.2789 of 2000. This Notice of Motion was taken out by the original defendant Nos.1 and 2. When the subject matter of the suit is the disputed portion of the garage admeasuring 100.5 sq.ft., the trial court was right in not entertaining even for ad-interim relief, the prayer of restraining orders in respect of the flat. The learned counsel for the appellants now states that the Notice of Motion shall be confined only to prayer clause (a) and, therefore, the trial court may consider the Notice of Motion No.2324 of 2005 for the said prayer clause alone.

3. As the appeal has been filed against an ad-interim order, it would be expedient that the same is decided by giving directions for expeditious decision in the Notice of Motion.

4. The appeal is, therefore, disposed off and it is directed that the Notice of Motion No.2324 of 2005 shall be heard and decided on its own merits as expeditiously as possible and preferably by 31st October, 2005. The parties to complete their respective pleadings on or before the next date in the Notice of Motion. It is clarified that transfer of the suit property by the plaintiffs shall be subject to the result in the Notice of Motion No.2324 of 2005.

(B.H. Marlapalle, J.)